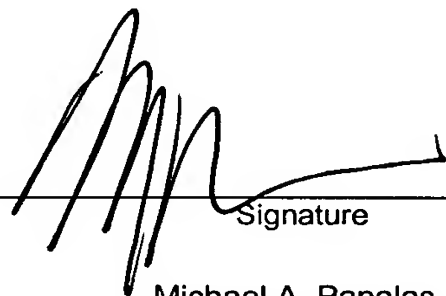




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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 10004991-1	
	Application Number 10/004,296-Conf. #8164	Filed October 31, 2001	
	First Named Inventor Thomas D. Benson		
	Art Unit 3627	Examiner J. A. Fischetti	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>40,381</u></p> <p> _____ Signature Michael A. Papalas _____ Typed or printed name</p> <p>_____ (214) 855-8186 Telephone number</p> <p>_____ December 6, 2005 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			

<input type="checkbox"/> *Total of <u>1</u> forms are submitted.
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<b>Pre-Appeal Brief Request for Review</b>	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV482724083US, in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.	
Dated: December 6, 2005	Signature: <u>Laura Horton</u> (Laura Horton)



HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, Colorado 80527-2400

Docket No.: 10004991-1  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Thomas D. Benson

Application No.: 10/004,296

Art Unit: 3627

Filed: October 31, 2001

Examiner: J. A. Fischetti

For: AUTOMATED SYSTEM FOR AND METHOD  
OF INVENTORY MANAGEMENT CONTROL

**APPLICANT'S ARGUMENTS FOR  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

MS AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY COMMENTS**

The Appellant hereby requests that a panel of Examiners formally review the legal and factual basis of the rejections of record prior to the filing of an Appeal Brief. This Request is filed with a Notice of Appeal.

**REMARKS****I. Issues**

Are the Examiner's 35 U.S.C. §§ 112, 102, and 113 rejections appropriate?

**II. Rejection under 35 U.S.C. § 112**

In the Office Action mailed October 7, 2005 (hereinafter "the Final Action"), the Examiner reiterated his argument that claims 21-24 are indefinite as it is unclear how the term "performance" is used. The Examiner opines "the term would seem to connote use of quality or standards but nothing has been recited to quantify this term." (see Final Action, pg. 2). The Examiner goes on to state "nowhere does Appellant make reference to...what Appellant intends as the definition of the term performance." (see Final Action pg. 5). The Appellant has repeatedly argued that while "performance" is admittedly broad, such breadth does not equate to indefiniteness. In the Response mailed July 7, 2005, the Appellant asserts "'performance' covers supply chain participants' usage rate or anything else within the scope of the claim; and,... is not limited to any one specific standard or quality." Moreover, reference to the specification makes clear that "performance" relates to, for example, "run rate information," including the consumption or rate of consumption of supplied materials by a supply chain participant. (spec. at pg. 5). Put simply, the Appellant feels that the Examiner has mistaken breadth for indefiniteness. The specification supports the claim as recited.

**III. Rejection under 35 U.S.C. § 102(b)**

In the Final Action the Examiner rejected claims 21, 22, and 24 under 35 U.S.C. § 102(b) as being anticipated by U.S. Statutory Invention Registration H1743 to Graves et al (hereinafter "Graves"). The Appellant respectfully submits, however, that Graves does not anticipate claims 21, 22, and 24 because Graves does not teach every limitation of Appellant's claimed invention. Claim 21 recites "computer readable code...operable to re-determine said required quantity using feedback relating to a performance of at least one supply chain participant." In the Final Action, the Examiner points to Graves, at column 17, lines 28-37, to satisfy "re-determine said required quantity using feedback relating to a

performance of at least one supply chain participant.” (Final Action, pg. 3). At this citation, Graves discloses comparing a projected storage tank level to the actual level once every three hours. If the difference in these levels exceeds a threshold value, the projected levels are recalculated using the last three hour flow rate. Based upon these new projected levels, the delivery of materials is adjusted accordingly. As the Appellant has argued before, the recalculation of a projected tank level based on flow rate, or the re-scheduling of a delivery in view of such, is not the same as re-determining a quantity using feedback relating to a performance of a supply chain participant. After all, a change in storage tank level may be completely independent of any activity, “performance” or otherwise, of a supply chain participant. For instance, a leak in the tank, evaporation, or temperature-based volumetric changes in the tank or fluid may well result in a change in tank level that is independent of performance of a supply chain participant. Put simply, Graves makes no mention of determining anything based upon performance of a supply chain participant in the chain supplying that tank.

Claims 22 and 24 depend from claim 21 and therefore inherit all limitations from claim 21. As Graves does not teach every limitation of claim 21, it does not teach every limitation of claims 22 and 24. Thus, claims 22 and 24 are allowable at least for the reasons set forth above with respect to claim 21.

#### **IV. Rejection under 35 U.S.C. § 103(a)**

In the Final Action, the Examiner reiterated his argument that claims 21-24 are obvious in view of the combination of Graves and U.S. Patent No. 6,816,839 to Gung et al (“Gung”). As set forth above with respect to the Examiner’s 35 U.S.C. § 102(b) rejection, Gung fails to teach or suggest “computer readable code...operable to re-determine said required quantity using feedback relating to a performance of at least one supply chain participant.” Moreover, Graves is not relied upon to teach or suggest this missing limitation. Therefore, the combination of Gung and Graves fails to satisfy the limitations of Appellant’s claimed invention.

## V. Conclusion

In view of the above, the Appellant respectfully traverses the rejections of record, and requests reconsideration and withdrawal of such. The required fee for the Notice of Appeal filed with this request is shown on the attached transmittal sheet. If any additional fee is due, please charge Deposit Account No. 08-2025, under Order No. 10004991-1 from which the undersigned is authorized to draw.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail, Airbill No. EV482724083US in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Deposit: December 6, 2005

Typed Name: Laura Horton

Signature: Laura Horton

Respectfully submitted,

By

Michael A. Papalas  
Reg. No.: 40,381

Date: December 6, 2005

Telephone No. (214) 855-8186